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April 25, 2011

VIA ECF AND REGULAR MAIL

Honorable Joel A. Pisano
United States District Judge
Clarkson S. Fisher Federal Building
and U.S. Courthouse
Room 341
402 E. State Street
Trenton, New Jersey 08608

Re: *Association of New Jersey Chiropractors et al. v. Aetna, Inc. et al.*
Civil Action No. 09-3761 (JAP) (TJB)
– and –
Premier Health Center, P.C. et al. v. UnitedHealth Group et al.
Civil Action No. 11-425 (FSH) (PS)

Dear Judge Pisano:

This office, along with O'Melveny & Myers LLP, represents defendants UnitedHealth Group, United Healthcare Services, Inc., and OptumHealth, Inc. (collectively "UnitedHealth") in the *Premier Health* matter, Civil Action No. 11-425. During a recent initial conference in that matter with counsel for all parties, Magistrate Judge Shwartz posed the question as to whether the case was related to any other matter pending in this District. In response, counsel for defendants identified the case's commonality with the *Association of New Jersey Chiropractors* matter pending before your Honor. In follow-up, we now write to request the Court's permission to file a formal motion to consolidate the two referenced cases for all pretrial purposes.

Judge Hochberg's protocols require that we seek the Court's permission prior to filing any motion other than a motion pursuant to FED.R.Civ.P. 12. Inasmuch as the *Association of New Jersey Chiropractors* matter bears the earlier docket number of the two cases, we are addressing this request to Your Honor as the Judge by whom a motion to consolidate would be adjudicated pursuant to L.Civ.R.42.1.

As will be more fully set forth in the motion, these cases are both purported class actions advancing nearly identical legal claims under ERISA. Brought on behalf of chiropractors and



Hon. Joel A. Pisano, U.S.D.J.

April 25, 2011

Page 2

other health care providers, each of the cases challenges the respective defendant's threatened or actual recoupment of payments made to the providers for services ultimately determined either not covered or to be the subject of an excessive charge under the terms of the applicable plan. In addition, each case challenges procedures employed in determining coverage. Both cases seek recovery of recouped payments pursuant to ERISA Section 502(a)(1), as well as associated equitable relief pursuant to Section 502(a)(3).

The *Association of New Jersey Chiropractors* case concerns recoupment by Aetna, while the *Premier Health* case concerns recoupment by UnitedHealth, Health Net of New York, Inc., and Health Net of the Northeast, Inc. While the former case adds a RICO claim to its recoupment challenge, both cases raise identical issues of law under ERISA and challenge purportedly similar practices and procedures. Indeed, the same counsel represent the putative class plaintiffs in both cases. Given this broad commonality of legal theories, we respectfully submit that substantial efficiencies in judicial economy as well in cost savings and convenience to the parties would be achieved if these cases were consolidated for all pretrial purposes.

If Your Honor permits us to bring this motion, we are prepared to move forward expeditiously so that it can be decided as early as practicable.

We understand that there are motions to dismiss and to strike currently pending before Your Honor in Civil Action No. 09-3761, and that the Court has deferred scheduling the initial Rule 16 conference in that matter until after disposition of the pending motions. Your Honor should be aware that defendants in Civil Action No. 11-425 were only recently served with process, and the issues have yet to be joined. Plaintiffs in that action filed an Amended Complaint on April 21, 2011, and defendants have been granted a 60-day extension of their time to respond. Magistrate Judge Shwartz has scheduled an initial Rule 16 conference for July 12, 2011.

Respectfully yours,

THOMAS R. CURTIN

TRC/ljl



Hon. Joel A. Pisano, U.S.D.J.
April 25, 2011
Page 3

cc: Hon. Faith S. Hochberg, U.S.D.J.
Hon. Patty Schwartz, U.S.M.J.
Hon. Tonianne J. Bongiovanni, U.S.M.J.
All counsel in Civil Action No. 09-3761 (JAP) (TJB)
All counsel in Civil Action No. 11-425 (FSH) (PS)